

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND OZARKS ACADEMY OF COSMETOLOGY, KAREN KIMBROUGH, OWNER

Come now Ozarks Academy of Cosmetology, Karen Kimbrough, Owner (collectively "Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's cosmetology school license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's cosmetology school license,

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¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

numbered 2012027704 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Board of Cosmetology and Barber Examiners ("Board") is an agency of the State of Missouri created and established pursuant to § 329.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee holds a cosmetology school license, license number 2012027704. The Board issued Licensee's school license on August 7, 2012. Licensee's school license is, and was at all times herein, current and active. Licensee also holds a cosmetology operator license, license number 2012030515. The Board issued Licensee's cosmetology operator license on August 29, 2012. Licensee's cosmetology operator license is now current and active.

3. Licensee owns and operates Ozarks Academy of Cosmetology, LLC ("Ozarks Academy"), a licensed school of cosmetology, located at 1709 Porter Wagoner Blvd., West Plains, Missouri.

4. On or about January 7, 2013, the Board's inspector conducted an inspection at Ozarks Academy. The inspection report documented Licensee as the owner of Ozarks Academy and the holder of a temporary instructor license, license number 2012042284. Licensee was present at the time of the inspection.

5. On or about January 16, 2013, the Board received a complaint regarding Licensee. The complaint alleged that Ozarks Academy failed to meet the "minimum standards of a professional cosmetology school." The complaint stated "[n]ever have I seen a training facility do more harm to its students, the community and the cosmetology profession than has been done by Ms. Kimbrough." The complaint stated that students and staff left the school, prior to completing the program, on bad terms and there was a very high attrition rate. The complaint stated that Licensee "has shown a wanton disregard for student safety." The complainant stated that Licensee put her in a position where she "could have seriously injured another student." During the incident, the complainant was left unsupervised and inadvertently cut off a "chunk" of the other student's hair and was left unsupervised with a curling iron. The complaint stated that after three months and paying \$3000, the complainant is unable to do a basic haircut. The complaint stated that Licensee failed to hire "minimally competent staff." The complaint stated that staff left the students with no supervision to go outside and smoke.

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6. On or about January 18, 2013, the Board received a complaint alleging that Licensee, in her capacity as an instructor trainee at Ozarks Academy, clocked in extra hours on time cards for her instructor training during hours when Ozarks Academy was not operating as scheduled with the Board and when there was no licensed instructor present. The complaint stated that though the school opened on September 4, 2012, by the end of October 2012, Licensee stated she had completed her 600 hours of instructor training and would now be an instructor. At the time, the scheduled hours for Ozarks Academy were Tuesday through Saturday, 8:30 a.m. to 5:30 p.m. The complaint stated that Licensee was coming in early, late and on weekends when there was no instructor present. The complaint stated she was violating the statutes and falsifying records. The complaint also stated that on Licensee's student contract, she stated she was an instructor. The complaint was signed by a licensed instructor and former student.

7. On or about January 30, 2013, the Board sent Licensee a copy of both complaints and invited Licensee to the Board's March 17, 2013 meeting. The letter instructed Licensee to bring a detailed response to the complaint, attendance records for her and all students and time records for all licensed instructors employed by Ozarks Academy.

8. In response to the complaint, Licensee appeared before the Board on March 17, 2013 meeting. Licensee provided a written statement that she "closed [Ozarks Academy] on March 1, 2013." Licensee also provided copies of time cards for herself from September through December 2012. The time cards demonstrated that Licensee did work over 72 hours in a week and during times of non-operation of the school. Additionally, Licensee provided the Board nothing regarding the closure of the school other than her one line statement above. Licensee provided no records for students or licensed instructors.

9. Section 329.040.1, RSMo, states:

Any person of good moral character may make application to the board for a license to own a school of cosmetology on a form provided upon request by the board. Every school of cosmetology in which any of the classified occupations of cosmetology are taught shall be required to obtain a license from the board prior to opening. The license shall be issued upon approval of the application by the board, the payment of the required fees, and the applicant meets other requirements provided in this chapter. The license shall be kept posted in plain view within the school at all times.

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10. State regulation 20 CSR 2085-8.020(1), states:

All instructor trainees shall be enrolled in a course of study of no less than three (3) hours per day and no more than twelve (12) hours per day, with a weekly

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total that is not less than fifteen (15) hours and no more than seventy-two (72) hours per week.

11. State regulation 20 CSR 2085-12.010, states, in pertinent part:

...

- (5) License changes.

...

(D) Termination of Operations. Any school voluntarily terminating its operation shall inform the board in writing prior to the anticipated closing date and in addition, properly terminated its students as set forth in section (9) of this rule, return all unused materials supplied by the board and supply the board with an address and telephone number where an authorized representative of the school can be contacted for additional information after the closing of the school.

...

(10) Every holder of a license to operate a school shall be responsible for providing continuous and adequate supervision of the school's students by licensed instructors at all times during regular school hours.

12. State regulation 20 CSR 2085-12.040(4), states, in pertinent part:

(4) Training and Calculation of Hours. This rule clarifies the hour requirements as authorized in section 329.040, RSMo.

(A) Minimum-Maximum Hours Accepted.

...

(2) All students and instructor trainees shall be enrolled in a course of study of no less than three (3) hours per day and no more than twelve (12) hours per day with a weekly total that is no less than fifteen (15) hours and no more than seventy-two (72) hours.

13. As a result of Licensee working over 72 hours a week and not under the supervision of an instructor, failing to provide statutorily required supervision for students and failing to properly notify the Board of, and appropriately document, the closing of Ozarks Academy, as described above in paragraphs 3 through 8, Licensee violated chapter 329, RSMo, and lawful regulations adopted pursuant to chapter 329, RSMo as described above in paragraphs 9 through 12, for which the Board has cause to take disciplinary action against Licensee's cosmetology school license.

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14. Cause exists for the Board to take disciplinary action against Licensee's cosmetology school license under § 329.140.2(4), (5), (6) and (13), RSMo, which states in pertinent part:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

(5) Incompetence, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(13) Violation of any professional trust or confidence[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

15. The terms of discipline shall include that the cosmetology school license, license number 2012027704, be placed on PROBATION for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to operate a cosmetology school under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall submit reports to the Missouri Board of Cosmetology and Barber Examiners, Post Office Box 1062, Jefferson City, Missouri 65102, stating truthfully whether Licensee has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1, during each year of the disciplinary period. The first report shall be due July 1, 2013.
- C. Licensee shall keep the Board apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

- D. Licensee shall comply with all provisions of the Chapters 328 and 329, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- E. During the disciplinary period, Licensee shall timely renew Licensee's license(s) and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.
- F. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapters 328 and 329, or fails to advise the Board of Licensee's current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 329.140.3, RSMo.
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.
- H. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).
- I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapters 328 and 329, RSMo, by Licensee not specifically mentioned in this document.

16. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 329, 610, and 324, RSMo.

17. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

18. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to, any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. (The parties) acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it

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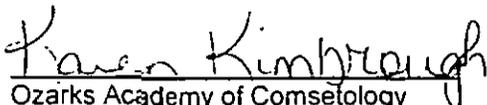
survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

19. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:
Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

20. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

BOARD


Ozarks Academy of Cosmetology
Karen Kimbrough, Owner


Emily R. Carroll
Executive Director
Missouri Board of Cosmetology and Barber Examiners

Date May 10, 2013

Date 5/16/2013

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